



H.R. 4472 — Adam Walsh Child Protection and Safety Act of 2006

Calendar No. 379

Read the second time on March 27, 2006, and placed on the Senate Legislative Calendar under General Orders.

Noteworthy

- The Senate is expected to take up H.R. 4472, but with a managers' substitute, which is titled the "Adam Walsh Child Protection and Safety Act of 2006."
- This bill contains provisions from two crime bills—H.R. 4472, the Children's Safety and Violent Crime Reduction Act of 2006, which passed the House, and S. 1086, which the Senate passed by unanimous consent on May 4, 2006.
- H.R. 4472, which, among other things, created a National Sex Offender Registry, passed the House on March 8, 2006, by voice vote. That bill now is pending on the Senate Calendar (Order No. 379). S. 1086, the Sex Offender Registration and Notification Act, currently is pending before the House.
- The managers' substitute creates a National Sex Offender Registry with uniform standards for the registration of sex offenders, including a lifetime registration requirement for the most serious offenders, and it establishes strong federal penalties for sex offenders who fail to register.
- By creating a national sex offender registry, the Act enables child protective service officials in all 50 states to share information and more effectively investigate child abuse cases.
- The bill also imposes enhanced penalties for the most serious crimes against children, as well as mandatory minimum penalties for recidivist offenders.
- The substitute is named for Adam Walsh to honor the memory of the son of John and Revé Walsh, who was kidnapped and murdered 25 years ago, when he was only six years old.

Background

This legislation was proposed as a comprehensive effort to counter the pervasive problem of violent and sexual crimes against children. Recently, public attention has been focused on several tragic attacks in which young children have been murdered, kidnapped, and sexually assaulted by sex offenders and career criminals. The Act recognizes, by name, some of those children, as their stories helped provide the impetus for this powerful legislation. Among those children recognized in the bill are: Jacob Wetterling, an 11-year-old boy who was abducted at gunpoint while riding his bike with friends and never seen again; Megan Nicole Kanka, a 7-year-old girl who was sexually assaulted and murdered by her neighbor, a twice-convicted sex offender; Jessica Lunsford, a 9-year-old girl who was abducted, raped, and killed by a convicted sex offender; Jetseta Gage, a 10-year-old girl who was abducted and murdered by a registered sex offender; and Dylan and Shasta Groene—9 and 8 years old, respectively—who were kidnapped from their bedroom and sexually molested by a convicted sex offender on release from a pending molestation criminal case (Dylan Groene was murdered). The bill is named for Adam Walsh, a 6-year-old Florida boy who, in 1981, was abducted from a mall during a shopping trip with his mother and later found murdered.

These widely publicized, tragic examples serve only as a small sampling of the epidemic of sexual exploitation and violence against children. Statistics show that 1 in 5 girls and 1 in 10 boys are sexually exploited before they reach adulthood, yet less than 35 percent of these assaults are reported to authorities.¹ Additionally, data from 12 states during the period of 1991 to 1996 show that 67 percent of all victims of sexual assault were juveniles, and 34 percent were under the age of 12. One of every seven victims of sexual assault was under the age of 6.²

Recidivism rates for sex offenders often exceed those of other criminals.³ The Department of Justice has found that released child molesters were more likely to be rearrested for a sex crime than released non-sex offenders. Released sex offenders were *four times* more likely to be rearrested for a sex crime than released non-sex offenders.⁴

Currently, there are more than 550,000 registered sex offenders in the United States and at least 100,000 are missing from the system.⁵ While all 50 states have sex offender registries, the information contained in those registries is not always shared. A national registry will give law enforcement at all levels access to information that will allow them to more effectively track sex offenders.

¹ H. Rept. 109-218, at 22.

² H. Rept. 109-218, at 22.

³ H. Rept. 109-218, at 22.

⁴ H. Rept., at 23, citing U.S. Dept. of Justice Office of Justice Programs—Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994* (Nov. 2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/rsorp94.pdf>.

⁵ Testimony of Ernie Allen, President & CEO, The National Center for Missing and Exploited Children, before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, June 9, 2005.

Bill Provisions

Title I: Sex Offender Registration and Notification Act

Title I establishes the National Sex Offender Registry. The national registry will include the following information for each sex offender: name, address, employment, vehicle identification information, fingerprints, a DNA sample, complete criminal history, a recent photo, in addition to other information. The public will not have access to the detailed National Sex Offender Registry; instead, a national public website will be available that will include relevant information about sex offenders. The public website will permit retrieval of information by a single query for any given zip code or geographic radius. In addition to a central national public website, each individual jurisdiction is required to establish its own Internet registry, which shall be accessible to the public.

The Act mandates that a sex offender shall register and keep the registration current in each jurisdiction where he resides, is an employee, and is a student. Initial registration shall be completed in the jurisdiction of conviction, and any subsequent in-person update shall be completed in the offender's jurisdiction of residence.

Under the Act, sex offenders are required to register prior to their release from prison, or within three days of being sentenced if there is no term of imprisonment. Thereafter, sex offenders must verify their information in person at regular intervals, depending on the severity of the sex offense they committed. This severity is determined by the sex offender's placement in a three-tier system. The least serious offenders are placed in Tier I, are required to appear in person once a year, and remain on the registry for 15 years. Tier II offenders must appear in person every six months and remain on the registry for 25 years. The most serious offenders, placed in Tier III, remain on the registry for life and are required to appear in person every three months to verify their information. Pursuant to this Act, any sex offender who knowingly fails to register or update his information faces up to ten years in prison. If an unregistered sex offender commits a crime of violence, he will receive a five-year mandatory prison sentence, in addition to any other sentence imposed.

The Act requires the Department of Justice to create and distribute software to jurisdictions to establish and operate uniform registries and Internet sites. The software will allow for immediate information-sharing among jurisdictions, Internet access by the public, and communication to certain community notification participants who choose to opt-in to receiving notice.

Title II: Federal Criminal Law Enhancements Needed to Protect Children from Sexual Attacks and Other Violent Crimes

The Act creates a number of increased penalties for federal sex offenses and violent crimes against children. Offenses for which penalties are increased include: sexual abuse, child sex-trafficking, and coercion or enticement to engage in criminal sexual activity or cause child prostitution. Additionally, the Act creates new penalties for the sale of date-rape drugs via the

Internet. Increased penalties for existing offenses include: 30 years to life—and in some cases death—for the murder of a child, a 30-year mandatory minimum for raping a child, and a 10-year mandatory minimum for child sex trafficking or prostitution. Title II also suspends the statute of limitations for all federal felony offenses of sexual abuse, sex trafficking, or child pornography.

The Act also extends several of the guarantees of the 2004 Crime Victims' Rights Act (CVRA) to federal habeas corpus review of state criminal convictions. Because such cases involve federal courts (but state prosecutors), this extension is limited to those provisions of CVRA that are enforced by a court (Congress cannot compel state prosecutors to enforce a federal statute). The victims' rights extended by this Act to federal habeas proceedings are: the right to be present at proceedings; the right to be heard at proceedings involving release, plea, sentencing, or parole; the right to proceedings free from unreasonable delay; and the right to be treated with fairness and with respect for the victim's dignity and privacy.

Title III: Civil Commitment of Dangerous Sex Offenders

The Act provides for civil commitment (defined in the bill, and involves secure civil confinement with appropriate care and treatment) procedures for sex offenders who, while incarcerated, show that they cannot conform their behavior once released. This title authorizes grants to states to operate civil commitment programs for sexually dangerous persons. Additionally, it authorizes civil commitment of certain sex offenders who are dangerous to others due to serious mental illness, abnormality, or disorder.

Title IV: Immigration Law Reforms to Prevent Sex Offenders from Abusing Children

This title provides that any alien convicted of the federal crime of failing to register as a sex offender is deportable. Additionally, the Act provides that a citizen convicted of a specified offense against a minor is not eligible to petition for a family-based visa. That bar, however, may be waived if the Secretary of Homeland Security determines that the citizen poses no risk to the alien with respect to whom the petition is filed.

Title V: Child Pornography Prevention

This title strengthens existing pornography record-keeping and labeling requirements for persons who produce materials containing simulated sexual conduct. The purpose of these provisions is to ensure universal age verification and record-keeping in order to protect children and teenagers from being exploited by pornographers. Under the Act, these records may be inspected on demand by the Department of Justice.

Title VI: Grants, Studies, and Programs for Children and Community Safety

The Act provides for a number of pilot programs, grants, and studies to address child and community safety issues. Such programs include: a pilot program for the electronic monitoring

of sex offenders; funding for Big Brothers and Big Sisters; and grants to allow parents to obtain fingerprint records for their children.

The Act also instructs the Department of Health and Human Services to create a national registry of persons who have been found to have abused or neglected a child. The information will be gathered from state databases of child abuse or neglect. It will be made available to state child-protective-services and law-enforcement agencies “for purposes of carrying out their responsibilities under the law to protect children from abuse and neglect.” The national database will allow states to track the past history of parents and guardians who are suspected of abusing their children. When child-abusing parents come to the attention of authorities (for example, when teachers begin to ask about bruises), these parents often will move to a different jurisdiction. A national database will give the state to which these parents move the ability to know the parents’ history. It will let a child-protective-services worker know, for example, whether he should prioritize investigation of a particular case because the parent has been found to have committed substantiated cases of abuse in the past in other states. Such a database also will allow a state that is evaluating a prospective foster parent or adoptive parent to learn about past incidents of child abuse that the person has committed in other states.

Title VII: Internet Safety Act

This title creates new penalties for child-exploitation enterprises—defined as a violation of at least one in a list of enumerated sex crimes against children as part of a series of felony violations constituting three or more separate incidents and more than one victim, and committed in concert with three or more other persons—providing a mandatory-minimum of 20 years imprisonment for that offense. The title also adds a mandatory 10-year enhancement for registered sex offenders who commit one in a list of federal felonies involving a minor. Additionally, this title creates a new crime for embedding words or digital images into the source code of a website with the intent to deceive a person into viewing obscenity.

The Internet safety provisions also enhance federal prosecution resources needed for the investigation and prosecution of child sex offenses. Those enhancements include funding the hiring of at least 200 additional Assistant United States Attorneys, the addition of at least 10 Internet Crimes Against Children (ICAC) Task Forces, and the addition of 45 forensic examiners within the Regional Computer Forensic Laboratories and Cyber Crimes Center. Additionally, the Internet Safety provisions expand the civil remedy available to children who have been sexually abused or exploited.